

**BEFORE THE
COMMISSION ON LANDLORD TENANT AFFAIRS
FOR MONTGOMERY COUNTY, MARYLAND**

In the matter of:

Steve and Lauren Boyle

Complainants

V.

Ygal and Ruhama Doron

Respondents

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Case No. 32365

Rental Facility: 11209 Buckwood Lane, Rockville, MD 20852 (License # 54268)

DECISION AND ORDER

The above captioned case having come before the Commission on Landlord-Tenant Affairs for Montgomery County, Maryland ("Commission"), pursuant to Sections 29-10, 29-14, 29-41, and 29-44 of the Montgomery County Code, 2001, as amended, and the Commission having considered the testimony and evidence of record, it is therefore, this 7th day of June, 2011, found, determined, and ordered, as follows:

BACKGROUND

On February 25, 2011, Steve and Lauren Boyle ("Complainants"), former tenants at 11209 Buckwood Lane, Rockville, MD ("Property"), a licensed rental property in Montgomery County, Maryland, filed a complaint with the Office of Landlord-Tenant Affairs within the Department of Housing and Community Affairs, ("Department") in which they alleged that their former landlords, Ygal and Ruhama Doron, owners of the Property ("Respondent") assessed unjust charges against their security deposit (\$5,100.00) plus accrued interest (\$153.00), in the amount of \$2,896.08, after the termination of their tenancy, in violation of Section 8-203 (f) (1) of the Real Property Article, Annotated Code of Maryland (1954, 2003 Repl. Vol., 2007 Suppl.), ("Real Property Article").

The Complainants assert that: (1) they did not damage the Property in excess of ordinary wear and tear during their tenancy; (2) the Respondents are charging them for repairs that existed at the beginning of the tenancy; and, (3) the Respondents had no reasonable basis to withhold any portion of their security deposit plus accrued interest.

The Respondents contend that the Complainants damaged the Property in excess of ordinary wear and tear during their tenancy, and that the amount withheld from the security deposit was for actual cost incurred to repair those damages.

The Complainants are seeking an Order from the Commission for the Respondents to refund the balance of their security deposit plus accrued interest, in the amount of \$2,896.08, and a penalty of up to three times that amount based on the Respondents' unreasonable withholding from their security deposit plus interest.

After determining that the complaint was not susceptible to conciliation, the Department referred this case to the Commission for its review, and on April 5, 2011, the Commission voted to hold a public hearing on May 24, 2011. The public hearing in the matter of Steven and Lauren Boyle v. Ygal and Ruhama Doron, relative to Case No. 32365, was held on May 24, 2011.

The record reflects that the Complainants and the Respondents were given proper notice of the hearing date and time. Present and sworn at the hearing and presenting evidence were the Complainant, Lauren Boyle and her attorney, Grace Cavelli; the Respondent, Ygal Doron; and, Baruch Pondak, Contractor, witness for the Respondent.

Without objection, the Commission entered into the record the case file compiled by the Department, identified as Commission's Exhibit No. 1. The Commission also entered into evidence the following exhibits offered by the Respondent: (1) a sample of a Romex wire staple (heavy duty wire staple), that the Respondent claims were all over the walls, identified as Respondent's Exhibit No.1; (2) a series of 7 pictures showing damage to the walls throughout the Property, identified as Respondent's Exhibit 2; (3) a series of 5 pictures showing damage to the wooden entrance floor, identified as Respondent's Exhibit 3; (4) a series of 6 pictures showing uncleaned gutters after the Complainants vacated the Property, identified as Respondent's Exhibit No. 4; (5) a series of 5 pictures showing the general conditions of the yard after the Complainants vacated the Property, identified as Respondent's Exhibit 5; (6) a series of 4 pictures showing the same yard after the Respondent cleaned it up, identified as Respondent's Exhibit No. 6; (7) a series of 4 pictures of the laundry room condition at the time the Complainants vacated the Property, identified as Respondent's Exhibit No. 7; (8) a series of 2 pictures of a broken statue found in the yard, identified as Respondent's Exhibit No. 8; and, (9) a series of 3 pictures showing broken light fixtures in the back yard, identified as Respondent's Exhibit No. 9.

FINDINGS OF FACT

Based on the testimony and evidence of record, the Commission makes the following Findings of Fact:

1. On May 22, 2009, the Complainants and the Respondents signed a one year lease agreement ("Lease") for the rental of the Property, which commenced on July 1, 2009, and expired on June 30, 2010, for a monthly rent of \$3,400.00.

2. On or about May 22, 2009, the Complainants paid the Respondents a security deposit, in the amount of \$5,100.00; which amount is receipted in the Lease.

3. The Commission finds that on May 25, 2009, an addendum to the Lease was signed by the parties, which reads as follows:

“...Tenant is responsible for the first \$75.00 of any repair or replacement beyond general maintenance, such as plumbing and electrical.
Both parties acknowledge that rent will be in landlord’s account by the first of each month...”

4. The Commission finds that on or about April 16, 2010, the parties agreed to an extension of the Lease until July 25, 2010.

5. The Commission finds that on July 25, 2010, the Complainants vacated the Property having paid rent in full through that date.

6. The Commission finds that on July 27, 2010, a joint final walkthrough of the Property took place, at which time damages were noted. Present at the walkthrough were Respondent Ygal Doron and Complainant Lauren Boyle. A copy of an unsigned walkthrough report is on file (Commission Exhibit No. 1-Pages 34-36).

7. The Commission finds that by correspondence dated August 23, 2011, within 45 days of the Complainants’ tenancy, the Respondents advised the Complainants of the following:

“...Here is the final listing of the damage in the house you were responsible for:

1. Repair holes in the walls and paint the upper floor, repair scratches on wooden floor, replace broken soap holder in the bathroom and repair tiles around it. The images taken while going through the house with Lauren show clearly what the Montgomery County Code (attached) defines as damage: “Holes in wall larger than nail size...Crayon marks, writing on the wall, unapproved paint color or excessive dirt requiring more than one coat to cover. Ripped, torn or marked wallpaper...Large gouges or scratches on wood floor.

To your remark that the soap holder was broken when you got into the house: It is not mentioned on the signed move-in inspection sheet and you never mentioned it verbally or by writing.

As you know, the house was painted just before you entered one year earlier. Per Lauren’s request, undamaged walls were painted as well, without any charge to you.

Cost of work: \$2,210

2. Basement carpet cleaning: The carpet was dirty and had stains from having pet in house. Per your request you had this done also before you entered the house, with no charge to you.

Cost of work: \$140.00

3. Front and back yard trimming and cleaning:

Front and back yard were apparently neglected and was not treated periodically. The images show shrubs, weeds and plants that haven’t been trimmed for long time. I mentioned it to Lauren about two months before you moved, and it was added in the move-out reminder I emailed you on June 30.

Cost of work: \$100

4. Clogged gutters:

It seems that there were never any gutters cleaning. The gutters were completely clogged and parts of the cover screens were on the ground. I showed and mentioned this to Lauren several times in recent months.

Cost of work: \$75

5. Garage door remotes:

Two holders are broken. They are not sold separately from the remote.

Cost of 2 new ones: \$65.98

6. Blue garbage container:

The blue container was missing. Please return it or bring a new one from the county.

Regarding the repair issue:

Under the agreement and the addendum thereto, you are responsible for the first \$75 of any repairs or replacement beyond general maintenance, such as plumbing and electrical. You signed and agreed to that lease addendum and the following repairs have been made that fall under this category:

1. Wall outlet: Lauren called the electrician because to her opinion using this outlet caused the “circuit breaker for the kitchen to keep tripping”. The electrician who checked the outlet said nothing was wrong with it. The reason for the circuit to trip was an additional refrigerator that was installed in the garage, on the other side of the wall, which I didn’t know about, never asked for and never approved.

Your part: \$75

2. Dishwasher repair.

Your part: \$75

3. Lauren claimed the shower is leaking to the basement. The plumber said nothing was wrong with the shower, and water leaked through the floor when too much water was on it (possibly from kids playing in the shower or on the floor). The shower doesn’t leak since you left the house.

Your part: \$75

8. The Commission finds that the Respondents refunded the Complainants the amount of \$2,356.92.

9. The Commission finds that the Respondents failed to credit the Complainants’ security deposit with the correct amount of simple interest which had accrued on their \$5,100.00 security deposit from the commencement of their tenancy July 1, 2009, until the termination of their tenancy, July 25, 2010.

10. The Commission finds credible the Respondent’s testimony that there was evidence of damage at the Property after the Complainants vacated. Furthermore, the Respondent provided sufficient evidence/documentation that the following damages claimed against the security deposit were in excess of ordinary wear and tear:

- (A) Excessive holes on the walls throughout the Property;
- (B) Scratches to the wooden entrance floor;
- (C) Dirty, stained carpet in the basement;
- (D) Yard not properly maintained;
- (E) Gutters not cleaned; and,
- (F) Garage remote holders broken.

11. The Commission does not find credible the Complainant's testimony that some of the repairs done to the Property were for damages that existed at time of move-in.

12. The Commission finds credible the testimony of Baruch Pondak, Contractor, whose opinion was in support of the Respondent's position that the Complainants damaged the Property in excess of ordinary wear and tear.

CONCLUSIONS OF LAW

Accordingly, based upon a fair consideration of the testimony and evidence contained in the record, the Commission on Landlord-Tenant Affairs concludes:

1. Pursuant to Section 8-203 (g)(1) of the Real Property Article states: "If any portion of the security deposit is withheld, the landlord shall present by first-class mail directed to the last known address of the tenant, within 45 days after the termination of the tenancy, a written list of the damages claimed under subsection (f)(1) of this section together with a statement of the cost actually incurred". The Commission concludes that the Respondents did send such a list to the Complainants within 45 days after their tenancy ended; therefore, they are in compliance with Section 8-203 (g) (1) of the Real Property Article.

2. Pursuant to Section 8-203 (g) (1) of the Real Property Article, the Respondents were within their rights to withhold from the Complainants' security deposit the cost actually incurred to repair damages to the Property in excess of normal wear and tear after the termination of their tenancy, which amount was \$1,280.98, as follows:

- A) \$750.00 for a second coat of paint needed on the walls throughout the Property; (from an initial \$2,210.00 charge);
- B) \$150.00 to fix scratches to the wooden entrance floor (included in an initial \$2,210.00 charge);
- C) \$140.00 to clean basement carpet;
- D) \$100.00 for clean-up of the yard;
- E) \$75.00 for clean-up of the gutters;
- F) \$65.98 to replace two garage door remotes.

3. The Commission concludes that the addendum (Commission Exhibit No. 1-Page 14) to the Lease is in violation of Montgomery County Executive Regulation 102-92E – "Establishment of Contractual Obligations for Maintenance Costs in Single Family Rental Units", which states in pertinent part:

“...As of the effective date of this Regulation, should the tenant not handle the maintenance items at tenant’s expense, the landlord may charge up to a maximum of \$50.00 in actual expenses per maintenance occurrence not to exceed a maximum of \$250.00 per annual lease term...”

Therefore the charge assessed against the Complainants’ security deposit for three repairs at \$75.00/each, for a total of \$225.00; is not allowed.

4. The Commission concludes that the Respondents’ failure to pay the Complainants the correct amount of interest which had accrued on their security deposit constitutes a violation of Section 8-203 (e) (1) of the Real Property.

5. Although the Commission concludes that the failure by the Respondents to refund a portion of the Complainants’ security deposit was unreasonable and constitutes a violation of Section 8-203 (e)(4) of the Real Property Article, to award a penalty, as requested by the Complainant, pursuant to Section 29-47(b)(3) of the County Code, the Commission must consider the egregiousness of the Landlord’s conduct in wrongfully withholding all or part of the Complainant’s security deposit, whether the Landlord acted in good faith, and any prior history of wrongful withholding of a security deposit. Based on the evidence, the Commission concludes that the Respondents’ conduct does not rise to the level of bad faith or egregiousness necessary to award a penalty. Therefore, Complainants’ request for such an award is denied.

ORDER

In view of the foregoing, the Commission on Landlord-Tenant Affairs hereby orders that the Respondents must pay the Complainants **\$1,615.10**, which sum represents the Complainants’ security deposit (\$5,100.00), plus accrued interest (\$153.00), minus amount authorized for damages in excess of ordinary wear and tear (\$1,280.98); and minus the amount already refunded to the Complainants (\$2,356.92).

Commissioner Kenneth Lemberg, Commissioner Denise Hawkins, and Commissioner Galia Steinbach, Panel Chairperson, unanimously concurred in the foregoing decision.

To comply with this Order, Respondents, Ygal and Ruhama Doron, must forward to the Office of Landlord-Tenant Affairs, 100 Maryland Avenue, 4th Floor, Rockville, MD 20850, within thirty (30) calendar days of the date of this Decision and Order, a check, made payable to Steven and Lauren Boyle, in the amount of \$1,615.10.

The Respondents, Ygal and Ruhama Doron, are hereby notified that Section 29-48 of the County Code declares that failure to comply with this Decision and Order is punishable by a \$500.00 civil fine Class A violation as set forth in Section 1-19 of the County Code. This civil fine may, at the discretion of the Commission, be imposed on a daily basis until there is compliance with this Decision and Order.

In addition to the issuance of a Class A civil citation and \$500.00 civil fine, should the Commission determine that the Respondents have not, within thirty (30) calendar days of the

date of this Decision and Order, made a bona fide effort to comply with the terms of this Decision and Order, it may also refer the matter to the Office of the County Attorney for additional legal enforcement.

Any party aggrieved by this action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland, within thirty (30) days from the date of this Decision and Order, pursuant to the Maryland Rules governing administrative appeals. Be advised that pursuant to Section 29-49 of the County Code, should the Respondents choose to appeal the Commission's Order, they must post a bond with the Circuit Court in the amount of the award (\$1,615.10) if a stay of enforcement of this Decision and Order is sought.

Galia Steinbach, Panel Chairperson
Commission on Landlord-Tenant Affairs